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Nos. 146, 147

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CHARLES ELM

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1937.

THE UNITED STATES OF AMERICA,
Petitioner,

vs.

RALPH RAYNOR,
Respondent.

THE UNITED STATES OF AMERICA,
Petitioner,

vs.

CHETT FOWLER,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

MEMORANDUM FOR RESPONDENTS.

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MEMORANDUM FOR RESPONDENTS.

Respondents respectfully ask leave of court to file this brief answer to contentions of the Government made for the first time on oral argument.

THE RELATION OF SECTIONS 155 AND 150 OF THE CRIMINAL CODE TO EACH OTHER.

In the oral argument, government counsel contended in substance, as we understood it, that Section 150 (18

U. S. C. A. 264) here involved did not refer to genuine distinctive government paper because Section 155 (18 U. S. C. A. 269) completely covered the matter of unlawful possession of such paper and that therefore the two sections would be repetitions of each other.

However, a careful reading of the two sections discloses that they are in fact complementary or supplementary of each other. The second clause of Section 155 (18 U. S. C. A. 169) punishes the secreting, embezzling, or taking or carrying away, without lawful authority, of genuine paper (before being printed). Section 155 does *not* cover the *unlawful possession* of such genuine Government paper. Unlawful possession of such genuine Government paper is covered by the clause of Section 150 (18 U. S. C. A. 264), herein involved.

The oral contention of the Government respecting Section 155 is also repugnant to its contention in the Government brief (pp. 12, 18, 27, 31, 32) that "Since the distinctive paper is seldom used in making counterfeits, the instant provisions, if the construction of the court below were to prevail, would be practically valueless in combating counterfeiting," etc. This contention is destroyed by the undisputed fact that Congress has protected the genuine distinctive paper from secreting, embezzling and carrying away in Section 155, which provisions would be needless if the Government's contention were sound.

In addition, the punishment of unlawful possession of the distinctive paper clearly was intended by Congress in Section 150 to supplement Section 155. To hold otherwise would mean that if the theft or embezzlement of Government paper were successfully completed and possession transferred to a "fence," the latter would be immune from prosecution.

This contention of the Government regarding Sections 155 and 150 is further overcome by the provisions of Section 172, Criminal Code (18 U. S. C. A. 286). This section has not been quoted in the Appendix to the Government brief. We therefore quote it in full as follows:

Section 172 (18 U. S. C. A. 286):

> "All counterfeits of any obligation of other security of the United States or of any foreign government, or counterfeits of any of the coins of the United States or of any foreign governments, and all material or apparatus fitted or intended to be used, or that shall have been used, in the making of any such counterfeit obligation or other security or coins hereinbefore mentioned, that shall be found in the possession of any person without authority from the Secretary of the Treasury or other proper officer to have the same, shall be taken possession of by any authorized agent of the Treasury Department and forfeited to the United States, and disposed of in any manner the Secretary of the Treasury may direct. Whoever, having the custody or control of any such counterfeits, material, or apparatus shall fail or refuse to surrender possession thereof upon request by any such authorized agent of the Treasury Department, shall be fined not more than $100, or imprisoned not more than one year or both."

This clearly indicates that the possession (without specific evil intent elsewhere denounced) of paper, that is, "material fitted to be used in the making of any such counterfeit obligation" is not nearly so serious an offense as that of possession of the genuine Government paper adapted for making Government obligations and also clearly demonstrates that the purpose and necessity urged by the Government for its construction of Section 150 is not applicable because such purpose and necessity are met by the provisions of Section 172.

At the oral argument Government counsel frankly admitted what is more guardedly expressed in its brief (p. 21) that its construction of Section 150 would ask the court to read the statutory words "adapted for making such obligations" as meaning "adapted for falsely making or counterfeiting such obligations." This is exactly the meaning of Section 172 and far from the meaning and language of Section 150 and of the indictment herein.

Respectfully submitted,

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